

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

B&H Broadcasting Systems, Inc.
Texarkana, Arkansas

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File No. EB-02-DL-290
NAL/Acct. No. 200332500001
FRN 0001-7226-77

FORFEITURE ORDER

Adopted: April 26, 2004

Released: April 29, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to B&H Broadcasting Systems, Inc. (“B&H”), licensee of radio station KZRB(FM), located in Texarkana, Arkansas, and owner of the station’s antenna structure (registration number 1236577) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves B&H’s failure to register its antenna structure for the station.

2. On October 7, 2002, the District Director of the Commission’s Dallas, Texas Office (“Dallas Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to B&H in the amount of three thousand dollars (\$3,000).² B&H filed a response on October 17, 2002.

II. BACKGROUND

3. On June 10, 2002, after receiving a report of an unregistered antenna structure near Dekalb, Texas, belonging to radio station KZRB(FM), a Commission agent from the Dallas Office checked the Commission’s Antenna Structure Registration (“ASR”) database and determined that there were no registered antenna structures within a two mile radius of the licensed geographical coordinates for station KZRB(FM) (33° 24’ 54” N / 094° 38’ 10” W). The agent then located Federal Aviation Administration (“FAA”) study 95-ASW-1807-OE for a 499 foot antenna structure located at geographical coordinates 33° 24’ 54.4” N / 094° 38’ 10.7” W. The FAA study was conducted on behalf of B&H.

4. Also on June 10, 2002, the agent contacted Mr. Ray Bursey, president of B&H. Mr. Bursey stated that the antenna structure had been registered when B&H upgraded station KZRB(FM) and constructed the tower. The Commission’s database showed that B&H applied for a license to cover the

¹ 47 C.F.R. § 17.4(a).

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332500001 (Enf. Bur. Dallas Office, October 7, 2002).

construction of KZRB(FM) at its present licensed location on December 16, 1996.³ However, Mr. Bursey was unable to produce any documentation to support his contention that the antenna structure had been registered.

5. On September 12, 2002, the agent again checked the Commission's ASR database. Still, there was no registered antenna structure within a two mile radius of the licensed geographical coordinates for station KZRB(FM), nor any antenna structure registered to B&H. Not until September 24, 2002, more than three months after the Dallas Office first notified B&H that its antenna structure was not registered, did the ASR database reflect that an antenna structure registration application had been filed for the KZRB(FM) tower.⁴ On October 7, 2002, the District Director of the Dallas Office issued a *NAL* to B&H for its willful and repeated failure to register the antenna structure. On October 17, 2002, B&H responded to the *NAL*. In its response, B&H contends that it had timely completed and submitted the tower registration paperwork to the Commission.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁷ In examining B&H's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

7. Section 17.4(a) of the Rules requires that the owner of any proposed antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission prior to construction. B&H is the owner of the 499 foot antenna structure for KZRB(FM). This structure required notice to the FAA, and thus Commission registration, because the structure exceeded 200 feet (60.96 meters) in height above ground.⁹ From at least June 10, 2002, when the FCC agent advised B&H that its antenna structure was not registered to November 6, 2002, when B&H successfully registered its antenna structure, we find that B&H willfully¹⁰ and repeatedly¹¹ failed to register its antenna structure for

³ File No. BLH-19961216KA.

⁴ After three applications, the antenna structure was successfully registered on November 6, 2002 and assigned ASR number 1236577.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. § 17.7.

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California* (continued....)

KZRB(FM) in violation of Section 17.4(a) of the Rules. Although B&H claims that it timely sent the required tower registration paperwork to the Commission, we have no evidence of any attempts by B&H to register the tower until three months after B&H was notified of the violation by the Dallas office, nor has B&H provided any such evidence.¹²

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ B&H Broadcasting Systems, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for its willful and repeated failure to register its antenna structure registration number 1236577 in violation of Section 17.4(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332500001 and FRN 0001-7226-77. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to B&H Broadcasting Systems, Inc. Inc., 3720 County Avenue, Texarkana, Arkansas 71854.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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Broadcasting Company, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

¹² B&H raises several other arguments that appear to have nothing to do with the issue of whether its tower has been registered, so we do not address them.

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.